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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x CLYDE DAVISON, JR.,

Plaintiff,
-against-

NOT FOR PUBLICATION BROOKLYN OFFICE

MEMORANDUM AND ORDER
16-CV-6594 (LDH) (LB)

STATE ADMINISTRATION PROCEEDING
ESTATE OF VIRGINIA JONE; KRISTA ROBERTS;
PAUL ROBERT,

Defendants.

-----x
LASHANN DEARCY HALL, United States District Judge:

Plaintiff Clyde Davison, Jr. brings this *pro se* action seeking to have this Court investigate a homicide. Plaintiff's request to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915 is granted, and his complaint is dismissed for lack of subject matter jurisdiction.

BACKGROUND

Plaintiff brings this action against the estate of Virginia Jones and against Ms. Jones's relatives and beneficiaries to her estate. (Compl., ECF. No. 2.) Although unclear, Plaintiff believes that he is entitled to a share of Virginia Jones's estate because he allegedly took care of her while he was a tenant in her home. (*Id.*) On October 30, 2015, Virginia Jones died while she was a patient at the Cobble Hill Nursing Home, located in Brooklyn. (*Id.*) Plaintiff alleges that Ms. Jones's death was a homicide and seeks to have this Court investigate her death. (*Id.*) It is unclear what further relief he seeks.

SUBJECT MATTER JURISDICTION

The District Courts of the United States are "courts of limited jurisdiction" and may not preside over cases absent subject matter jurisdiction. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005) (internal quotation marks and citation omitted). "Congress has granted

district courts original jurisdiction over cases in which there is a federal question, *see* 28 U.S.C. § 1331, and certain cases between citizens of different states, so long as the requirements of complete diversity and amount in controversy are met, *see* 28 U.S.C. § 1332.” *Perdue Pharma L.P. v. Kentucky*, 704 F.3d 208, 213 (2d Cir. 2013). “[B]ecause [subject matter jurisdiction] involves a court’s power to hear a case, [it] can never be forfeited or waived.” *United States v. Cotton*, 535 U.S. 625, 630 (2002). “[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety.” *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006).

Plaintiff’s complaint fails to present a substantial federal question. Section 1331 gives the court “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. *Bracey v. Bd of Educ. of City of Bridgeport*, 368 F.3d 108, 113 (2d Cir. 2004). A case arises under federal law where federal law creates the plaintiff’s cause of action or where “the well-pleaded complaint ‘necessarily depends on resolution of a substantial question of federal law.’” *Id.* (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 28 (1983)). Even when construed liberally, it does not appear that Plaintiff’s claims are premised on a violation of any federal constitutional or statutory right. Furthermore, diversity of citizenship is lacking as both Plaintiff and Defendants reside in New York.

CONCLUSION

Accordingly, it is hereby ordered that the complaint is dismissed without prejudice for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3). The Clerk of Court is directed to enter judgment. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for

purpose of an appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

Dated: Brooklyn, New York
February 1, 2017

SO ORDERED:

/s/LDH
LASHANN DEARCY HALL
United States District Judge